

Virginia Election Recounts and Contests -- The Basics

(Updated for November 2013 Election)

Recounts

A recount is a simple redetermination of all of the votes cast on Election Day. Recount officials are only counting the ballots that were previously cast. A voter's eligibility to vote or any alleged irregularities cannot be called into question during a recount (only in a contest, see below).

In Virginia, there are no automatic recounts. Only an apparent losing candidate can ask for a recount, and only if the difference between the apparent winning candidate and that apparent losing candidates is not more than one percent (1%) of the total votes cast for those two candidates. (A law change effective 7/1/2009 allows a recount to be requested if the difference is not more than five percent (5%) of the total votes cast for those two candidates if one of those candidates was a write-in candidate for that office). ([§ 24.2-800](#), Code of Virginia)

The apparent losing candidate cannot request a recount until after the election is certified. ([§ 24.2-801](#)) The State Board of Elections certifies primary and election results for all federal offices (Presidential Electors, U.S. Senate and U.S. Congress), state offices (Governor, Lt. Governor, and Attorney General and General Assembly seats) and any offices shared by two or more localities. **The State Board of Elections will meet to certify the results of the November 5, 2013 election on Monday, November 25, 2013.** An apparent losing candidate has ten calendar days from the certification date to request a recount ([§ 24.2-801](#)), so the time frame for filing a request for a recount for this election for an office certified by the State Board is from **November 26, 2013 through December 5, 2013.**

An apparent losing candidate requesting a recount of a primary or election for statewide office files the petition requesting a recount with the Circuit Court of the City of Richmond. A candidate requesting a recount for any other office files the recount petition with the Circuit Court where the candidate being challenged resides.

Local electoral boards certify all other election results for local offices. Each electoral board meets in the days following the election to canvass and certify these results. Any apparent losing candidate requesting a recount for a local election must file a petition for a recount with the Circuit Court where the challenged candidate resides within ten days after the electoral board certifies the election results. Any local candidate seeking a recount should check with their local general registrar or electoral board to determine the actual date of certification for these local offices.

The Chief Judge of the Circuit Court where the recount petition was filed and two other judges appointed by the Chief Justice of Supreme Court of Virginia make up the recount court. The recount court, outlines all procedures and the manner in which the recount will be conducted for each type of voting equipment used (pursuant to [§ 24.2-802](#) of the Code of Virginia). The court appoints recount officials from among the officers of election who served during the election, who are appointed to represent the respective parties to the recount. In setting the procedures for the recount, the court will also decide if the actual recounting of votes cast will take place in the various localities or in a central location. After all of the votes cast are recounted, the court will certify the candidate with the most votes as the winner.

The counties and cities involved in a recount are responsible for paying their own costs for the recount if the margin between the two candidates who are parties to the recount is a half of a percent or less, or if the candidate requesting the recount is declared the winner by the recount court. Otherwise, the candidate who requested the recount must pay the costs for conducting the recount. Any candidate requesting a recount who may be assessed with costs shall post a bond with surety with the court in the amount of \$10 per precinct in the area subject to the recount. More information about recount costs is available in [§ 24.2-802\(E\) and \(F\)](#) of the Code of Virginia.

Because of the federal deadline for the seating of the state's presidential electors, Virginia law provides an accelerated schedule for any recount of such election (see [§ 24.2-801.1](#)). The presidential candidate represents the vice presidential candidate and the candidates for electors ([§ 24.2-800](#)). The deadline for filing of notice of intent to contest is 5:00 PM on the second calendar day following certification of the election by the State Board of Elections. The recount "shall be held promptly" and must be concluded at least six days before the time fixed for the convening of the electors. If a contest of an election for Virginia's presidential electors is also filed, they would proceed simultaneously ([§ 24.2-805](#)).

Contests

An unsuccessful candidate in the election may file a notice of intent to contest the election. The notice must state the grounds for the contest, which must include:

- (i) objections to the eligibility of the contestee based on specific allegations,
- (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or
- (iii) both.

Contests of elections for most offices in Virginia may be filed only within 30 days of the election or ten days of the date of the primary or a special election held on a date other than that of a general election. If a recount has been held for an election to the House of Delegates, State Senate, Governor, Lieutenant Governor or Attorney General, the apparent losing candidate for that office who also loses the recount has until 3 days after the conclusion of the recount (or the 30 days, whichever date is later) to file notice of intent to contest. A candidate who was originally declared the winner and loses as a result of a recount may file notice of intent to contest the election within 10 days following the conclusion of the recount.

Office	Notice of intent to contest is filed with
Election of Presidential Electors	Circuit Court, City of Richmond
Primary for U.S. Senate* or Statewide Office	Circuit Court, City of Richmond
Presidential Primary	No contest provisions in Code of Virginia
Election for Governor, Lt. Governor or Attorney General	Clerk of the House of Delegates
Election for House of Delegates	Clerk of the House of Delegates
Election for State Senate	Clerk of the State Senate
Primary for U.S. House of Representatives*, House of Delegates or State Senate	Circuit Court where challenged candidate resides
Primary or Election for any county, city, town or district office	Circuit Court where challenged candidate resides

* Contests of elections for U.S. Senate or the U.S. House of Representatives are provided for by [Article I, section 5](#) of the U.S. Constitution.

As with recounts of elections for presidential electors, Virginia law provides an accelerated schedule for any contest of such election. The presidential candidate represents the vice presidential candidate and the candidates for electors (§ [24.2-807](#)). The deadline for filing of the notice of intent to contest is 5:00 PM on the second calendar day following certification of the election by the State Board of Elections. The contest "shall not wait upon the results of any recount" and must be concluded at least six days before the time fixed for the convening of the electors (§ [24.2-805](#)). Any recount or contest for an election for presidential electors would proceed simultaneously.

References

Virginia laws governing recounts and contests are in [Chapter 8 of Title 24.2](#) of the Code of Virginia.

Virginia's Recount Standards are available on the [website of the State Board of Elections](#) under "Election Laws."

Notice: The above is intended only as a summary of Virginia election laws.